JOSEPH WONG PHUI LUN v. YEOH LOON GOIT

[O.C.J. (Chua J.) February 3, 1978]

[Singapore — Divorce Petition No. 36 of 1976]

Divorce — Petition for — Seven years' separation — Objections to — Whether petitioner had acquired domicile of choice at date of petition — Respondent's wish for reconciliation — Whether relevant — Women's Charter (Cap. 47), ss. 80(1)(c), 82(1)(e), 82(2)(g).

The petitioner sought for divorce praying that his marriage to the respondent be dissolved under section 82(1)(e) of the Women's Charter (Cap. 47) (hereinafter called the Charter) on the ground of seven years' separation. The parties were married in 1952 at Selangor under the provisions of the Civil Marriage Ordinance 1952. They were born in Kuala Lumpur and there are six children of the marriage.

The petitioner came to live in Singapore leaving his wife and family in Kuala Lumpur in 1967, to set up a partnership firm. He continued to be a partner of a firm in Kuala Lumpur and returned to Kuala Lumpur weekly and stayed at the matrimonial home.

In March 1968, after a quarrel with his wife (over his affair with one *P.*) he stopped staying at the matrimonial home whenever he came to Kuala Lumpur. In 1969 he decided to live with *P.* in Singapore. In 1970, the petitioner became a permanent resident of Singapore. In mid 1968 he resigned from two clubs in Kuala Lumpur and sold his interest in the Kuala Lumpur firm. He became a member of two clubs in Singapore in 1968.

The petition was defended on two grounds: (i) The court had no authority to make a decree as the domicile of the parties at the time when the petition was presented was not in Singapore (section 80(1)(c) of the Charter) and (ii) On the merits and upon a true interpretation of section 82(1)(e) of the Charter, a decree should not be granted.

Held: (1) clear evidence is required to establish a change of domicile. In particular, to displace a domicile of origin in favour of the domicile of choice, the standard of proof goes beyond a mere balance of probabilities;

(2) the oath of the person whose domicile is in question as to his intention to change his domicile is not conclusive. The question for the court is whether upon a review of all the circumstances it gives credit to his evidence;

(3) it is always material, in determining what is a man's domicile, to consider where his wife and children live and have their permanent place of residence or where his establishment is kept. But where the marriage has broken down, as in this case, the residence of the wife loses its significance;

(4) the domicile of the parties to this marriage was in Singapore at the time when the petition was presented.

(5) when a petition is based on the ground of seven years' separation, "no question of fault on the part of the petitioner enters into the picture at all" and the amendments contained in section 82(1)(e) and section 82(2)(g) are designed to put an end to marriages where the parties have been separated for at least seven years and are unlikely to be reconciled;

(6) when a petition is presented under section 82(1)(e) or section 82(2)(g), the fact that the respondent wishes to continue with the marriage is not a valid ground for refusing to grant a dissolution of the marriage. *Moses* v. *Moses* [1968] 1 M.L.J. 96 followed.

[Editorial Note: See note to *Ramasamy* v. *Ramasamy* [1978] 1 M.L.J. 99.]

Cases referred to:-

(1) *Henderson* v. *Henderson* [1965] 1 All E.R. 179, 181.

(2) *Wilson* v. *Wilson* (1869-72) 2 P. 435.

(3) *Flatt* v. *Attorney-General of New South Wales* (1877-1878) 3 A.C. 336.

(4) *Leon* v. *Leon* [1966] 3 W.L.R. 1164.

(5) *Moses* v. *Moses* [1968] 1 M.L.J. 96.

DIVORCE PETITION.

Tan Kok Quan for the petitioner.

J.D. Grimberg for the respondent.

Chua J.: The petitioner, Joseph Wong Phui Lun, presented a petition for divorce to this court praying that his marriage to the respondent, Yeoh Loon Goit alias Yoa Hsiao Yu, may be dissolved under section 82(1)(e) of the Women's Charter (Cap. 47) on the ground that his wife has lived separately from him for a period of not less than seven years immediately preceding the presentation of the petition and is unlikely to be reconciled with him.

The parties were married on December 24, 1952, at the Registry of Marriages, Selangor, according to the provisions of the Civil Marriage Ordinance, 1952, a law providing that or in contemplation of which this marriage is monogamous. At the date of the marriage the petitioner was a bachelor and the respondent a widow. Both the parties were born in Kuala Lumpur. There are six children of the marriage.

After the marriage the parties lived in Kuala Lumpur. About nine months after the marriage the petitioner left for England where he studied at Leeds University. Nine months later, after the birth of the first child, his wife joined him at Leeds. When he finished his university course in 1956 they moved and lived in London where he took his articleship and studied for the examination of the Institute of Chartered Accountants of England and Wales. He successfully completed his examination in May 1959, and the parties returned to Kuala Lumpur sometime in December 1959. During the period they were in England three other children were born.

When they returned to Kuala Lumpur they first went to live with his sister for nine months. After that they moved and lived at No. 2, 12/6 Petaling Jaya, Selangor, and later they moved to No. 4, 12/6 Petaling Jaya. Both these houses were then owned by the wife. Between 1959 and 1963 two more children were born.

The petitioner first worked for Peat, Marwick & Mitchell in Kuala Lumpur, a firm of accountants. He worked there until April 30, 1964, when he left to set up his own practice Azman, Wong, Salleh & Co. The firm extended its business and on July 1, 1967, the firm started a joint partnership with Arthur Young & Co. of New York and the petitioner became the managing partner of the joint company, Arthur Young, Azman, Wong, Salleh & Co. with its office at the American International Assurance Building in Robinson Road, Singapore.

As managing partner of the joint partnership the petitioner said he had to build up an audit practice of international standard in Singapore and that it was necessary for him to live in Singapore. He continued to be a partner in Azman, Wong & Salleh until September 30, 1970, and until he sold his shares he continued his business in Kuala Lumpur.

He came to live in Singapore alone around June 1967, but he had to go back to Kuala Lumpur once or twice a week. When he returned to Kuala Lumpur he stayed at the matrimonial home.

In 1964 or 1965 Poon Ah Moi (now the mistress of the petitioner) was employed by the petitioner to

work in his Kuala Lumpur office. Poon Ah Moi is an accountant and a Singapore citizen. In 1967 she could not get an extension of her work permit and in November 1967, she was transferred to Singapore to work in the petitioner's Singapore office. According to the petitioner, he and Poon Ah Moi decided to live together sometime in the first half of 1969 and to settle down in Singapore. He raised a bank loan to enable her to buy No. 8 Jalan Harun, Singapore, where they went to live and are still living. According to the respondent she heard for the first time that her husband was having some sort of association with Poon Ah Moi in December 1966.

I have no doubt that the petitioner was having an affair with Poon Ah Moi before she was transferred to Singapore in November 1967.

The petitioner went to New York in late January 1968, to visit Arthur Young & Co. He was away for five weeks. When he came back to Singapore he stayed there for one week and then went back to Kuala Lumpur around March 2. According to the petitioner his wife was extremely angry and there was a quarrel and he was locked out of the bedroom and he had to pass the night with the children in the children's room. The next morning he found that his wife had thrown his books and his clothings on the driveway. There was then a quarrel and according to him his wife abused him using very foul language and she called him "thick-faced" and said he had been "her gigolo before and even now (he) still stayed in her house." She further said: "Don't think that I want you at all, you can scram and good riddance for good". He replied: "If this is what you want I am going away for good." He then took his clothes, important documents and books and put them in his car and drove away. He returned to Singapore late in the afternoon the next day. He then ceased staying at the matrimonial home. Thereafter he did go back to Kuala Lumpur once or twice a week to attend to his Kuala Lumpur business but he stayed with his sister whenever he was in Kuala Lumpur.

The wife, however, gave a different version of the quarrel. The petitioner did not write to her or the children when he was in New York and he did not tell her that he was returning. According to her, she first heard the news from the petitioner's mistress who telephoned her from Singapore. She was greatly distressed when she heard that because he did not tell her himself. They had a quarrel when he arrived at the matrimonial home. During the quarrel he told her that he had another woman in Singapore. That night they were reconciled and he gave her a gold brooch which he had purchased from America. She spent that night with him and they had sexual intercourse. The next day he returned to Singapore. She drove him to the airport. She denied she threw his clothes and books on the driveway and she denied she abused him. She said that the petitioner returned to Kuala Lumpur on March 5 and 16. On March 16 he told her that he was going to Sabah and Hong Kong. After her husband's departure from Sabah she received certain information about her husband and his mistress. She then telephoned the mistress at the petitioner's Singapore office and told her not to break up the marriage. When her husband returned to Kuala Lumpur on March 23 or 24, he was very angry and scolded her for having telephoned his Singapore office and said he wanted a divorce. Her husband then left the matrimonial home permanently the following day.

I have no doubt that the petitioner's version of what took place on March 2 and 3 is the true version. I find that the parties have lived separately since March 3, 1968.

On June 16, 1968, the petitioner presented a petition for divorce in Kuala Lumpur on the grounds that the respondent had treated him with cruelty. The parties came to an agreement and the petition was withdrawn.

This petition is defended on two grounds. The first is that this court has no authority to make a decree of divorce as the domicile of the parties at the time when the petition is presented is not in Singapore, (section 80(1)(c) of the Women's Charter (Cap. 47)).

The evidence of the petitioner is that he first came to live in Singapore, leaving his wife and family in Kuala Lumpur in the matrimonial home, around June 1967, to set up the partnership of Arthur Young, Azman Wong & Co. Originally he came to live in Singapore on an entry permit. He continued to be a partner of Azman, Wong & Salleh in Kuala Lumpur and went back to Kuala Lumpur once or twice a week and stayed at the matrimonial home. After March 3, 1968, after a quarrel with his wife, which I have described earlier, he stopped staying at the matrimonial home whenever he came to Kuala Lumpur. In 1969 he and Poon Ah Moi decided to live together and they set up house at No. 8 Jalan Harun, Singapore. In May 1970, he became a permanent resident of Singapore and he was issued a blue identity card on May 28, 1970. He can stay in Singapore for as long as he likes. He said that he applied for permanent residence in Singapore as he knew at that time his future was in Singapore. In mid-1969 he resigned from the Royal Selangor Golf Club and from the Selangor Club, both these clubs are in Kuala Lumpur. On September 30, 1970, he sold his interest in Azman, Wong and Salleh and also the Arthur Young partnership. On October 1, 1970, he started work for Thiess-Petrosca International (Pte) Ltd. in Singapore and he is the Financial & Administration Manager of this Company and its Indonesian sister Company, P.T. Petrosca International, Indonesia. He became a member of the Singapore Island Country Club and the American Club in Singapore in early 1968. Both his parents are dead. His three brothers are living in Peninsula Malaysia. He has three sisters and one step-sister living in Kuala Lumpur. He has a sister, who is a Singapore citizen, now living in London and one step-sister living in Wolverhampton, England. All his brothers and sisters are married and have their own families. He has three children by his mistress and they are living with him at No. 8 Jalan Harun.

It is submitted by counsel for the respondent that looking at the evidence in its totality the petitioner

has not established the acquisition of a domicile of choice in Singapore. I am asked to take the following factors into consideration. (1) In June 1968, when the petitioner presented his divorce petition in Kuala Lumpur he contended that although he was then living in Singapore he was resident in Kuala Lumpur and that both he and his wife were domiciled in Malaysia. (2) The basic reason for the petitioner coming to Singapore to live was for the purpose of employment. (3) The petitioner is not and never has been a Singapore citizen; he has been and is still a Malaysian. (4) The petitioner has close members of his family in Malaysia. (5) The petitioner owns no property in Singapore. (6) The petitioner has told his daughter in no uncertain terms that if he fails in his present petition he would leave Singapore and Malaysia permanently. (7) The petitioner has also told his daughter that he has been making inquiries about a job elsewhere.

The domicile of origin of the parties in this case is Malaysia. The question before the court is whether the petitioner has acquired a domicile of choice in Singapore as at January 19, 1976, the date of the presentation of the petition.

Clear evidence is required to establish a change of domicile. In particular, to displace the domicile of origin in favour of the domicile of choice, the standard of proof goes beyond a mere balance of probabilities (per Sir Jocelyn Simon P. in *Henderson* v. *Henderson*).[1]

It is not in dispute that the petitioner has been residing in Singapore since 1968 and is still residing here. The petitioner has stated on oath that in 1969 he formed the intention to live in Singapore permanently. The authorities have held that the oath of the person whose domicile is in question as to his intention to change his domicile is not conclusive. The question for the court is whether upon a review of all the circumstances it gives credit to his evidence, (*Wilson* v. *Wilson*).[2]

It is not in dispute that the petitioner first came to reside in Singapore for the sole purpose of employment and it is clear that that is insufficient to acquire a domicile of choice. However, the intention to make the residence permanent need not be in existence at the time of first arrival in the country where the domicile of choice is alleged to be acquired. It may be, and often is, formed after residence has been continued for sometime. But as soon as that intention is formed then the acquisition of domicile of choice is completed and no subsequent change of mind, or doubts arising as to the wisdom of the termination, can by themselves affect the domicile so acquired.

Has the petitioner during the period June 1967 to the end of 1970 formed the intention to make Singapore his permanent home?

In early 1968 he joined two Singapore clubs and in mid-1969 he resigned from two Kuala Lumpur clubs. In my view this is a relevant circumstance to be taken into consideration.

From mid-1969 the petitioner lived with his mistress in Singapore and he has three children by her. The first child was born on July 9, 1970, in Singapore and twin girls were born on September 7, 1971, also in Singapore. The petitioner's association with the mistress is of special signifiance. It was not one of a passing fancy. It began according to him in 1969, although I think that it took place very much earlier, and he is still today living with her and the three children in Singapore.

It is always material, in determining what is a man's domicile, to consider where his wife and children live and have their permanent place of residence or where his establishment is kept, (*Platt* v. *Attorney-General of New South Wales*).[3] But where the marriage has broken down, as in this case, the residence of the wife loses its significance.

The petitioner applied for and was granted permanent residence in Singapore in May 1970. In September 1970, he sold off his interest in the Kuala Lumpur partnership which meant that he ceased to be employed by the Arthur Young partnership in Singapore. He did not go elsewhere but remained in Singapore and joined his present firm in October 1970, and is now on its permanent staff. All these factors go a long way to support his contention that he formed the intention to remain permanently in Singapore around June 1969, after the May 1969 riots in Malaysia.

It is true that the petitioner is still a Malaysian citizen but he has declared on oath that he contemplated applying for Singapore citizenship as soon as he qualifies for the minimum residential qualification of ten years, which will be in May 1980.

The respondent relies strongly on the letter dated September 1, 1977, written by the petitioner to his daughter in England in which he said:

"The divorce hearing against your mother is scheduled for October 27, 1977. This is one law suit your mother cannot win because either I get my divorce or, if I don't, I shall leave Singapore and Malaysia permanently."

The petitioner has given his explanation why he wrote the letter and that he told a lie when he said in the letter that he would leave Singapore and Malaysia if he did not get a divorce. It appears to me that this letter is an expression of disgust of the respondent's spiteful behaviour towards him, and not of his intention to abandon his domicile of choice. However, even if the petitioner has acquired another domicile after the petition has been presented this court would still have jurisdiction to entertain this petition (*Leon* v. *Leon*).[4]

Upon a review of all the circumstances I am satisfied that it has been proved on the part of the petitioner that he has acquired a domicile of choice in Singapore. I find that the domicile of the parties to this marriage is Singapore at the time when the petition is presented.

The second ground on which this petition is defended is that on the merits and upon a true interpretation of section 82(1)(e) of the Women's Charter a decree should not be granted.

Section 82(1)(e) reads:

"82—(1) Any husband may present a petition for divorce to the court praying that his marriage may be dissolved on the ground that his wife—

(a) ....

(b) ....

(c) ....

(d) ....

(e) has lived separately from the petitioner for a period of not less than seven years immediately preceding the presentation of the petition and is unlikely to be reconciled with him."

The argument of counsel for the respondent is this. Section 82(1)(a), (b), (c) and (d) are grounds for divorce where the wife is the guilty party and the husband the innocent party. But section 82(1)(e) is different. It says that the husband may present a petition on the grounds that his wife "has lived separately from the petitioner for a period of at least seven years immediately preceding the presentation of the petition" and the wife is unlikely to be reconciled with the husband. It is submitted that if the wife says that she wants to reconcile with the husband the court is not entitled to ignore that evidence and that sub-section (e) does not repose in a petitioning husband an absolute right to a decree if he proves seven years' separation.

In 1968 in the case of *Moses* v. *Moses*[5] Winslow J. was asked to determine the following question.

"Whether, in a petition of divorce under section 84(1)(e) of the Women's Charter, 1961 (No. 18 of 1961), (now section 82(1)(e)) the neglect, failure or refusal of the petitioner to have made efforts to effect a reconciliation with the respondent is (1) a reasonable answer or (2) a countercharge or (3) an allegation in defence to the petition?"

Winslow J. held that no such neglect, failure or refusal on the part of the petitioner to effect a reconciliation is a reasonable answer or a countercharge or an allegation in defence of a petition.

Counsel for the respondent submits that Winslow J.'s decision was wrong. He argues that in order for Winslow J.'s decision to be right the words of sub-section (e) would have to be "having lived separately from the petitioner for a period of not less than seven years immediately preceding the presentation of the petition *and that the petitioner is unlikely to be reconciled with her.*" He submits that the underlying scheme of the Women's Charter is for the protection of women and that sub-section (e) was enacted to enable a husband who is at fault to bring proceedings for divorce after a protracted separation of more than seven years but in order to protect the wife he should only be entitled to a decree if the wife is prepared to concede that the marriage is dead. As to this part of the argument of counsel for the respondent it should be observed that under the Women's Charter a wife may also present a petition for divorce to the court praying that her marriage may be dissolved on a similar ground (see section 82(2)(g) of the Charter).

Winslow J. has set out his reasons in full in his judgment for arriving at his decision. I respectfully agree with the learned judge that when a petition is based on the ground of seven years' separation "no question of fault on the part of the petitioner enters into the picture at all" and that the amendments contained in section 82(1)(e) and section 82(2)(g) are designed to put an end to marriages where the parties have been separated for at least seven years and are unlikely to be reconciled. As Winslow J. said, "Where the marriage bond has become no more than a detested shackle after the parties have been separated for not less than seven years, it is in the public interest that the tie should be severed." In my judgments the provisions of section 82(1)(e) and section 82(2)(g) of the Women's Charter were correctly construed by Winslow J.

In my view when a petition is presented under section 82(1)(e) or 82(2)(g) the fact that the respondent wishes to continue with the marriage is not a valid ground for refusing to grant a dissolution of the marriage.

There is no dispute in this case that the parties have lived separately for not less than seven years. The evidence is clear that the parties are unlikely to be reconciled.

The petitioner has proved his case under section 82(1)(e) of the Women's Charter. The court pronounces a decree nisi to be made absolute in three months.

Order accordingly.

Solicitors: *Lee & Lee; Drew & Napier.*